

[*Saporito v. Houston Lighting & Power Co.*](#), 92-ERA-38 (ALJ Apr. 25, 1997)

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U.S. Department of Labor
Office of Administrative Law Judges
Heritage Plaza Bldg, 5th Floor
111 Veteran's Memorial Boulevard
Metairie, LA 70005

Date Issued: April 25, 1997

CASE NOS: 92-ERA-38
92-ERA-45
93-ERA-28
(Consolidated)

In The Matter of

THOMAS J. SAPORITO, JR.
Complainant

v.

HOUSTON LIGHTING AND POWER COMPANY
Respondent

**RECOMMENDED ORDER APPROVING SETTLEMENT AND DISMISSING
CASES**

This proceeding arises under the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. § 5851 (1982), as amended, and the regulations promulgated thereunder at 29 C.F.R. Part 24 which are employee protective provisions of the ERA or of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011, *et seq.* The Secretary of Labor is empowered to investigate and determine "whistleblower" complaints filed by employees at facilities licensed by the Nuclear Regulatory Commission (NRC) who are allegedly discharged or otherwise discriminated against with regard to their terms and

[Page 2]

conditions of employment for taking any action relating to the fulfillment of safety or other requirements established by the NRC.

The issues presented in these consolidated cases were litigated by the parties at a hearing conducted by the undersigned on March 14-17, March 20-24, 1995 and July 10-14, 1995.

On April 22, 1997, Counsel for Houston Lighting and Power (HL&P) and Complainant filed a Joint Motion For Approval of a Settlement Agreement and Dismissal With Prejudice and an attached Settlement Agreement and Full and Final Release based upon a compromise of outstanding issues. The Agreement is signed by Complainant Thomas J. Saporito, Jr. on April 17, 1997, and on April 18, 1997, by Counsel for Respondent HL&P and purports to incorporate the understanding of the parties as to the basis of the settlement. HL&P considers the terms of the settlement agreement to be confidential and expressly requests that HL&P be notified of any Freedom of Information Act requests involving the settlement agreement, pursuant to 29 C.F.R. Part 70.26. Complainant does not oppose HL&P's request of notification. The parties have moved that I recommend the Settlement Agreement be approved and the case be dismissed with prejudice.

The Agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. See paragraphs 1, 4, and 5(c). My review of the settlement agreement is limited to a determination of whether its terms are a fair, adequate and reasonable settlement of Thomas J. Saporito, Jr.'s complaints concerning violations of the Energy Reorganization Act. 42 U.S.C. § 5851(b)(2)(A); Macktal v. Secretary of Labor, 923 F.2d 1150, 1153-1154 (5th Cir. 1991); Fuchko and Yanker v. Georgia Power Co., 89-ERA-9, 89-ERA-10 (Sec'y, March 23, 1989). The basic criteria is whether or not the settlement adequately protects the whistleblower. Virginia Electric and Power Co., 19 FERC §61, 333 (Federal Energy Regulatory Commission, 1982); Polizzi v. Gibbs & Hill, Inc., 87-ERA-38 (Secretary's Order of July 18, 1989). Further, the settlement must not be contrary to the public interests. Heffley v. NGK Metals Corporation, 89-SDW-2 (Sec'y March 6, 1990).

After consideration of the settlement agreement and the representations of the parties, I find the agreement to be fair, adequate and reasonable, and I believe it is in the public interest to adopt the agreement as a basis for the administrative disposition of this matter.¹ Therefore, I recommend approval of the Settlement Agreement and dismissal with prejudice of the outstanding issues involving HL&P and Complainant Thomas J. Saporito, Jr., as set

[Page 3]

forth in complaints which form the basis of the proceedings ongoing in Case Nos. 92-ERA-38, 92-ERA-45 and 93-ERA-28.

ORDERED this 25th day of April, 1997, at Metairie, Louisiana.

LEE J. ROMERO, JR.
Administrative Law Judge

NOTICE: This Recommended Order and the administrative file in the matter will be forwarded for review by the Secretary of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The Administrative Review Board has the responsibility to advise and assist the Secretary in the preparation and issuance of final decisions in employee protection cases adjudicated under the regulations of 29 C.F.R. Parts 24 and 1978. See 61 Fed. Reg. 19978 and 19982 (1996).

[ENDNOTES]

¹ I note that paragraph 5(b) of the Settlement Agreement and Full and Final Release requires Complainant Saporito to voluntarily agree "not to ever apply for any employment or accept employment or assignments with any employer for work related to such companies [i.e., Houston Lighting & Power Company or its parent company Houston Industries, Inc., or other affiliates or subsidiaries of Houston Industries, Inc.], including but not limited to contract labor, services or consulting or otherwise appear at the South Texas Nuclear Generation Station in Matagorda County, Texas." Although such term restricts Complainant Saporito's future employment opportunities, I find that the provision is neither offensive to the underlying public policy or interest of keeping information channels open and viable nor a deterrent to or prohibitive of Complainant Saporito's right to engage in future protected activities.